

1 A bill to be entitled
2 An act relating to postsentencing forensic analysis;
3 amending s. 925.11, F.S.; defining terms; authorizing
4 specified persons to petition a court for forensic
5 analysis that may result in evidence of the identity
6 of a perpetrator or accomplice to a crime resulting in
7 a conviction; providing requirements for such a
8 petition for postsentencing forensic analysis;
9 requiring a court to make specified findings before
10 entering an order for forensic analysis; requiring
11 forensic analysis to be performed by the Department of
12 Law Enforcement; providing exceptions; requiring the
13 department to submit a DNA profile meeting submission
14 standards to certain DNA databases; requiring the
15 results of the DNA database search to be provided to
16 specified parties; authorizing a court to order
17 specified persons to conduct a search for physical
18 evidence reported to be missing or destroyed in
19 violation of law; amending s. 925.12, F.S.;
20 authorizing specified defendants to petition for
21 forensic analysis after entering a plea of guilty or
22 nolo contendere; requiring a court to inquire of a
23 defendant about specified information relating to
24 physical evidence prior to accepting a plea; amending
25 s. 943.325, F.S.; authorizing certain samples obtained

from postsentencing forensic analysis to be entered into the statewide DNA database; authorizing DNA analysis and results to be released to specified entities; amending s. 943.3251, F.S.; requiring the department to perform forensic analysis and searches of the statewide DNA database; providing an exception; requiring the results of forensic analysis and a DNA database search to be provided to specified entities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 925.11, Florida Statutes, is amended to read:

925.11 Postsentencing forensic analysis ~~DNA testing~~.—

(1) DEFINITIONS.— As used in this section, the term:

(a) "Forensic analysis" means the process by which a forensic or scientific technique is applied to evidence or biological material to identify the perpetrator of, or accomplice to, a crime. The term includes, but is not limited to, DNA (deoxyribonucleic acid) testing.

(b) "Petitioner" means a defendant who has been convicted of and sentenced for a felony.

(2) PETITION FOR EXAMINATION.—

(a) ~~1.~~ A person who has entered a plea of guilty or nolo

51 contendere to a felony prior to July 1, 2020, or who has been
52 tried and found guilty of committing a felony and has been
53 sentenced by a court established by the laws of this state may
54 petition that court to order the forensic analysis ~~examination~~
55 of physical evidence collected at the time of the investigation
56 of the crime for which he or she has been sentenced that may
57 result in evidence material to the identity of the perpetrator
58 of, or accomplice to, the crime that resulted in the person's
59 conviction ~~may contain DNA (deoxyribonucleic acid) and that~~
60 ~~would exonerate that person or mitigate the sentence that person~~
61 ~~received.~~

62 ~~2. A person who has entered a plea of guilty or nolo~~
63 ~~contendere to a felony prior to July 1, 2006, and has been~~
64 ~~sentenced by a court established by the laws of this state may~~
65 ~~petition that court to order the examination of physical~~
66 ~~evidence collected at the time of the investigation of the crime~~
67 ~~for which he or she has been sentenced that may contain DNA~~
68 ~~(deoxyribonucleic acid) and that would exonerate that person.~~

69 (b) A petition for postsentencing forensic analysis ~~DNA~~
70 ~~testing~~ under paragraph (a) may be filed or considered at any
71 time following the date that the judgment and sentence in the
72 case becomes final.

73 (3)(2) METHOD FOR SEEKING POSTSENTENCING FORENSIC ANALYSIS
74 ~~DNA TESTING.~~

75 (a) A ~~The~~ petition for postsentencing forensic analysis

76 ~~DNA testing must be made under oath by the sentenced defendant~~
77 ~~and~~ must include the following:

78 1. A statement of the facts relied on in support of the
79 petition, including a description of the physical evidence
80 ~~containing DNA~~ to be tested and, if known, the present location
81 or the last known location of the evidence and how it was
82 originally obtained;

83 2. A statement that the evidence was not previously
84 subjected to forensic analysis ~~tested for DNA~~ or a statement
85 that the results of any previous forensic analysis ~~DNA testing~~
86 were inconclusive and that subsequent scientific developments in
87 forensic analysis ~~DNA testing techniques~~ would likely produce a
88 ~~definitive result~~ evidence material to establishing that the
89 ~~petitioner~~ identity of the perpetrator of, or accomplice to, is
90 ~~not the person who committed the crime;~~

91 3. A statement that the petitioner ~~sentenced defendant~~ is
92 innocent and how the forensic analysis ~~DNA testing~~ requested by
93 the petitioner may result in evidence that is material to ~~will~~
94 ~~exonerate~~ the identity of the perpetrator of, or accomplice to,
95 ~~the defendant of the crime for which the defendant was sentenced~~
96 ~~or will mitigate the sentence received by the defendant for that~~
97 crime;

98 4. A statement that identification of the defendant is a
99 genuinely disputed issue in the case, and why it is an issue;

100 5. A statement that the petitioner will comply with any

101 court order to provide a biological sample for the purpose of
102 conducting requested forensic analysis and acknowledging such
103 analysis could produce exculpatory evidence or evidence
104 confirming the petitioner's identity as the perpetrator of, or
105 accomplice to, the crime or a separate crime.

106 65. Any other facts relevant to the petition; ~~and~~

107 76. A certificate that a copy of the petition has been
108 served on the prosecuting authority; and

109 8. The petitioner's sworn statement attesting to the
110 contents of the petition.

111 (b) Upon receiving the petition, the clerk of the court
112 shall file it and deliver the court file to the assigned judge.

113 (c) The court shall review the petition and deny it if it
114 is insufficient. If the petition is sufficient, the prosecuting
115 authority shall be ordered to respond to the petition within 30
116 days.

117 (d) Upon receiving the response of the prosecuting
118 authority, the court shall review the response and enter an
119 order on the merits of the petition or set the petition for
120 hearing.

121 (e) Counsel may be appointed to assist the petitioner
122 ~~sentenced defendant~~ if the petition proceeds to a hearing and if
123 the court determines that the assistance of counsel is necessary
124 and makes the requisite finding of indigency.

125 (f) The court shall make the following findings when

126 ruling on the petition:

127 1. Whether the petitioner ~~sentenced defendant~~ has shown
128 that the physical evidence that may be subjected to forensic
129 analysis ~~contain DNA~~ still exists;

130 2. Whether the results of forensic analysis ~~DNA testing~~ of
131 that physical evidence would be admissible at trial and whether
132 there exists reliable proof to establish that the evidence has
133 not been materially altered and would be admissible at a future
134 hearing; and

135 3. Whether there is a reasonable probability the forensic
136 analysis may result in evidence that is material to the
137 identity of the perpetrator of, or accomplice to, the crime
138 ~~there is a reasonable probability that the sentenced defendant~~
139 ~~would have been acquitted or would have received a lesser~~
140 ~~sentence if the DNA evidence had been admitted at trial.~~

141 (g) If the court orders forensic analysis ~~DNA testing~~ of
142 the physical evidence, the cost of such analysis ~~testing~~ may be
143 assessed against the petitioner ~~sentenced defendant~~ unless he or
144 she is indigent. If the petitioner ~~sentenced defendant~~ is
145 indigent, the state shall bear the cost of the forensic analysis
146 ~~DNA testing~~ ordered by the court, unless otherwise specified in
147 paragraph (i).

148 (h) Except as provided in paragraph (i), any forensic
149 analysis ~~DNA testing~~ ordered by the court shall be performed
150 ~~carried out~~ by the Department of Law Enforcement or its

151 designee, as provided in s. 943.3251.

152 (i) The court may order forensic analysis to be performed
153 by a private laboratory and may assess the cost of such analysis
154 against the petitioner when:

155 1. The prosecuting authority and the petitioner mutually
156 select a private laboratory to perform the forensic analysis;

157 2. The petitioner makes a sufficient showing that the
158 forensic analysis ordered by the court is of such a nature that
159 it cannot be performed by the Department of Law Enforcement or
160 its designee; or

161 3. The petitioner makes a sufficient showing that the
162 forensic analysis will be significantly delayed because of state
163 laboratory backlog.

164 (j) Before the court may order forensic analysis to be
165 performed by a private laboratory the petitioner shall certify
166 to the court that the private laboratory is:

167 1. Accredited by an accreditation body that is a signatory
168 to the International Accreditation Cooperation Mutual
169 Recognition Agreement.

170 2. Designated by the Federal Bureau of Investigation in
171 accordance with 34 U.S.C. s. 12591 and that the private
172 laboratory's accreditation includes DNA testing and is compliant
173 with Federal Bureau of Investigation quality assurance
174 standards, if DNA testing is requested.

175 (k) If the court orders forensic analysis in the form of

176 DNA testing, and the resulting DNA sample meets statewide DNA
177 database submission standards established by the Department of
178 Law Enforcement, the department must perform a DNA database
179 search. A private laboratory ordered to perform forensic
180 analysis under paragraph (i) must cooperate with the prosecuting
181 authority and the department for the purpose of carrying out
182 this requirement.

183 1. The department shall compare any DNA profiles obtained
184 from the testing to:

185 a. DNA profiles of known offenders maintained in the
186 statewide DNA database under s. 943.325;

187 b. DNA profiles from unsolved crimes maintained in the
188 statewide DNA database under s. 943.325; and

189 c. Any local DNA databases maintained by a law enforcement
190 agency in the judicial circuit where the petitioner was
191 convicted.

192 2. If the testing complies with Federal Bureau of
193 Investigation requirements and the data meets National DNA index
194 system criteria, the department shall request the National DNA
195 index system to search its database of DNA profiles using any
196 profiles obtained from the testing.

197 (1)(i) The results of the forensic analysis ~~DNA testing~~
198 and the results of any search of the combined DNA index system
199 and statewide and local DNA databases ordered by the court shall
200 be provided to the court, the petitioner ~~sentenced defendant,~~

201 and the prosecuting authority. The petitioner or the state may
202 use the information for any lawful purpose.

203 (4)-(3) RIGHT TO APPEAL; REHEARING.—

204 (a) An appeal from the court's order on the petition for
205 postsentencing DNA testing may be taken by any adversely
206 affected party.

207 (b) An order denying relief shall include a statement that
208 the petitioner ~~sentenced defendant~~ has the right to appeal
209 within 30 days after the order denying relief is entered.

210 (c) The petitioner ~~sentenced defendant~~ may file a motion
211 for rehearing of any order denying relief within 15 days after
212 service of the order denying relief. The time for filing an
213 appeal shall be tolled until an order on the motion for
214 rehearing has been entered.

215 (d) The clerk of the court shall serve on all parties a
216 copy of any order rendered with a certificate of service,
217 including the date of service.

218 (5)-(4) PRESERVATION OF EVIDENCE.—

219 (a) Governmental entities that may be in possession of any
220 physical evidence in the case, including, but not limited to,
221 any investigating law enforcement agency, the clerk of the
222 court, the prosecuting authority, or the Department of Law
223 Enforcement shall maintain any physical evidence collected at
224 the time of the crime for which a postsentencing testing of DNA
225 may be requested.

(b) In a case in which the death penalty is imposed, the evidence shall be maintained for 60 days after execution of the sentence. In all other cases, a governmental entity may dispose of the physical evidence if the term of the sentence imposed in the case has expired and no other provision of law or rule requires that the physical evidence be preserved or retained.

(c) In any case in which physical evidence requested for forensic analysis, and last known to be in possession of a governmental entity, is reported to be missing or destroyed in violation of this section, the court may order the evidence custodian or other relevant official to conduct a physical search for the evidence. If a search is ordered, the governmental entity must produce a report containing the following information:

1. The nature of the search conducted.
2. The date the search was conducted.
3. The results of the search.
4. Any records showing the physical evidence was lost or destroyed.
5. The signature of the person who supervised the search, attesting to the accuracy of the contents of the report.

The report must be provided to the court, the petitioner, and the prosecuting authority.

Section 2. Section 925.12, Florida Statutes, is amended to

251 read:

252 925.12 Forensic analysis ~~DNA testing~~; defendants entering
253 pleas.—

254 (1) For defendants who have entered a plea of guilty or
255 nolo contendere to a felony on or after July 1, 2006, but before
256 July 1, 2020, a defendant may petition for postsentencing DNA
257 testing under s. 925.11 under the following circumstances:

258 (a) The facts on which the petition is predicated were
259 unknown to the petitioner or the petitioner's attorney at the
260 time the plea was entered and could not have been ascertained by
261 the exercise of due diligence; or

262 (b) The physical evidence for which DNA testing is sought
263 was not disclosed to the defense by the state prior to the entry
264 of the plea by the petitioner.

265 (2) For defendants who have entered a plea of guilty or
266 nolo contendere to a felony on or after July 1, 2020, a
267 defendant may petition for postsentencing forensic analysis
268 under s. 925.11 under the following circumstances:

269 (a) The facts on which the petition is predicated were
270 unknown to the petitioner or the petitioner's attorney at the
271 time the plea was entered and could not have been ascertained by
272 the exercise of due diligence; or

273 (b) The physical evidence for which forensic analysis is
274 sought was not disclosed to the defense by the state prior to
275 the entry of the plea by the petitioner.

276 (2) For defendants seeking to enter a plea of guilty or
277 nolo contendere to a felony on or after July 1, 2020 ~~July 1,~~
278 ~~2006~~, the court shall inquire of the defendant and of counsel
279 for the defendant and the state as to physical evidence
280 ~~containing DNA~~ known to exist that, if subjected to forensic
281 analysis, could produce evidence material to the identification
282 of the perpetrator of, or accomplice to, the crime ~~could~~
283 ~~exonerate the defendant~~ prior to accepting a plea of guilty or
284 nolo contendere. If no such physical evidence ~~containing DNA~~
285 ~~that could exonerate the defendant~~ is known to exist, the court
286 may proceed with consideration of accepting the plea. If such
287 physical evidence ~~containing DNA that could exonerate the~~
288 ~~defendant~~ is known to exist, the court may postpone the
289 proceeding on the defendant's behalf and order forensic analysis
290 ~~DNA testing~~ upon motion of counsel specifying the physical
291 evidence to be tested.

292 (3) It is the intent of the Legislature that the Supreme
293 Court adopt rules of procedure consistent with this section for
294 a court, prior to the acceptance of a plea, to make an inquiry
295 into the following matters:

296 (a) Whether counsel for the defense has reviewed the
297 discovery disclosed by the state and whether such discovery
298 included a listing or description of physical items of evidence.

299 (b) Whether the nature of the evidence against the
300 defendant disclosed through discovery has been reviewed with the

301 defendant.

302 (c) Whether the defendant or counsel for the defendant is
303 aware of any physical evidence disclosed by the state for which
304 forensic analysis could produce a result material to the
305 identification of the perpetrator of, or accomplice to, the
306 crime ~~DNA testing may exonerate the defendant.~~

307 (d) Whether the state is aware of any physical evidence
308 for which forensic analysis could produce a result material to
309 the identification of the perpetrator of, or accomplice to, the
310 crime ~~DNA testing may exonerate the defendant.~~

311 (4) It is the intent of the Legislature that the
312 postponement of the proceedings by the court on the defendant's
313 behalf under subsection (2) constitute an extension attributable
314 to the defendant for purposes of the defendant's right to a
315 speedy trial.

316 Section 3. Subsections (6) and (14) of section 943.325,
317 Florida Statutes, are amended to read:

318 943.325 DNA database.—

319 (6) SAMPLES.—The statewide DNA database may contain DNA
320 data obtained from the following types of biological samples:

321 (a) Crime scene samples.

322 (b) Samples obtained from qualifying offenders required by
323 this section to provide a biological sample for DNA analysis and
324 inclusion in the statewide DNA database.

325 (c) Samples lawfully obtained during the course of a

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326 criminal investigation.

327 (d) Samples from deceased victims or suspects that were
328 lawfully obtained during the course of a criminal investigation.

329 (e) Samples from unidentified human remains.

330 (f) Samples from persons reported missing.

331 (g) Samples voluntarily contributed by relatives of
332 missing persons.

333 (h) Samples obtained from DNA analysis ordered under s.
334 925.11 or s. 925.12.

335 (i)~~(h)~~ Other samples approved by the department.

336 (14) RESULTS.—The results of a DNA analysis and the
337 comparison of analytic results shall be released only to
338 criminal justice agencies as defined in s. 943.045 at the
339 request of the agency or as required by s. 925.11 or s. 925.12.
340 Otherwise, such information is confidential and exempt from s.
341 119.07(1) and s. 24(a), Art. I of the State Constitution.

342 Section 4. Section 943.3251, Florida Statutes, is amended
343 to read:

344 943.3251 Postsentencing forensic analysis ~~DNA testing and~~
345 DNA database searches.—

346 (1) When a court orders postsentencing forensic analysis
347 ~~DNA testing~~ of physical evidence, pursuant to s. 925.11, the
348 Florida Department of Law Enforcement, ~~or~~ its designee, or a
349 private laboratory shall carry out the analysis. ~~testing~~ If the
350 forensic analysis produced a DNA sample meeting statewide DNA

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351 database submission standards, the department shall conduct a
352 DNA database search.

353 (2) The cost of forensic analysis ~~such testing~~ and any
354 database search may be assessed against the petitioner ~~sentenced~~
355 ~~defendant~~, pursuant to s. 925.11, unless he or she is indigent.

356 (3) The results of postsentencing forensic analysis ~~DNA~~
357 ~~testing~~ and any database search shall be provided to the court,
358 the petitioner ~~sentenced defendant~~, and the prosecuting
359 authority.

360 Section 5. This act shall take effect July 1, 2020.